

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OMNI VEST CORP., LLC,

Plaintiff,

v.

KATIE HARMON AND JOHNNY
ACEVEDO,

Defendants,

No. 2:25-cv-01114-TLN-CSK

ORDER

This matter is before the Court on Defendant Katie Harmon and Johnny Acevedo's ("Defendants") Notice of Removal and Motion to Proceed in Forma Pauperis. (ECF Nos. 1, 2.) For the reasons set forth below, the Court hereby REMANDS the action to the Superior Court of California, County of Sacramento, due to lack of subject matter jurisdiction.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 On February 13, 2025, Plaintiff Omni Vest Corp. LLC (“Plaintiff”) brought an action for
3 unlawful detainer against Defendants in Sacramento Superior Court for possession of real
4 property known as 3829 Marconi Avenue, #68, Sacramento, California 95821 (the “Property”).
5 (ECF No. 1 at 5.) On February 13, 2025, Defendants filed a Notice of Removal. (*Id.* at 1.)

6 **II. STANDARD OF LAW**

7 28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the
8 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is
9 proper only if the court could have exercised jurisdiction over the action had it originally been
10 filed in federal court.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

11 Courts “strictly construe the removal statute against removal jurisdiction,” and “the
12 defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980
13 F.2d 564, 566 (9th Cir. 1992) (per curiam). Furthermore, “[i]f the district court at any time
14 determines that it lacks subject matter jurisdiction over the removed action, it must remedy the
15 improvident grant of removal by remanding the action to state court.” *California ex rel. Lockyer*
16 *v. Dynege, Inc.*, 375 F.3d 831, 838, *as amended*, 387 F.3d 966 (9th Cir. 2004).

17 Federal question jurisdiction is set forth in 28 U.S.C. § 1331. See 28 U.S.C. § 1331. The
18 “presence or absence of federal question jurisdiction is governed by the ‘well-pleaded complaint
19 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
20 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc.*, 482 U.S. at 386. Federal
21 question jurisdiction therefore cannot be based on a defense, counterclaim, cross-claim, or third-
22 party claim raising a federal question. See *Vaden v. Discover Bank*, 556 U.S. 49 (2009); *Hunter*
23 *v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

24 **III. ANALYSIS**

25 Defendants argue in their notice of removal that this action involves a federal question.
26 (ECF No. 1 at 2.) Specifically, Defendants contend Plaintiff violated the Fair Debt Collection
27 Practices Act, 15 U.S.C. § 1692, Federal Rule of Civil Procedure 60, and the Due Process Clause
28 of the Fourteenth Amendment. (*Id.* at 2–3.) However, under the “well-pleaded complaint rule,” a

1 suit only “arises under” federal law “when the plaintiff’s statement of his own cause of action
2 shows that it is based upon [federal law].” *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S.
3 149, 152 (1908). Federal question jurisdiction cannot be established on an actual or anticipated
4 defense or counterclaim. *See Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).

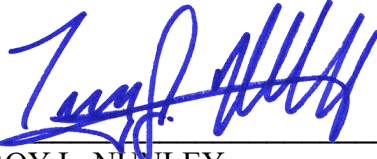
5 Here, because the Complaint only sets forth an unlawful detainer claim, which is a matter
6 of state law, no federal question jurisdiction exists. *Kim v. Krietz*, No. 2:21-CV-00251-TLN-JDP,
7 2021 WL 1081130, at *2 (E.D. Cal. Feb. 11, 2021) (finding similarly). Moreover, the amount in
8 controversy does not exceed \$75,000 so there are also no grounds for diversity jurisdiction. *See*
9 28 U.S.C. § 1332. Given the lack of federal subject matter jurisdiction, it is appropriate for the
10 Court to *sua sponte* remand this case. *United Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360
11 F.3d 960, 967 (9th Cir. 2004) (“[T]he district court ha[s] a duty to establish subject matter
12 jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not.”).

13 IV. CONCLUSION

14 For the foregoing reasons, Defendants’ motion to proceed in forma pauperis (ECF No. 2)
15 is DENIED as moot, and the Court hereby REMANDS this action to the Superior Court of
16 California, County of Sacramento.

17 IT IS SO ORDERED.

18 Date: April 17, 2025

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22 TROY L. NUNLEY
CHIEF UNITED STATES DISTRICT JUDGE